

ENTERED

July 25, 2019

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

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|--------------------------------|----------------------------------|
| AVIE LEE LOZANO, | § |
| | § |
| Petitioner, | § |
| VS. | § CIVIL ACTION NO. 2:19-CV-00170 |
| | § |
| LORIE DAVIS-DIRECTOR TDCJ-CID, | § |
| | § |
| Respondent. | § |

ORDER TRANSFERRING PETITION

Petitioner Avie Lee Lozano, a Texas state prisoner currently incarcerated at the Garza East Unit in Beeville, Texas, has filed this 28 U.S.C. § 2254 petition (D.E. 1) challenging his conviction for burglary in the 226th District Court of Bexar County.

A habeas action may be filed either in the district where the petitioner is in custody or in the district in which the petitioner was convicted. 28 U.S.C. § 2241(d); *Wadsworth v. Johnson*, 235 F.3d 959 (5th Cir. 2000). Lozano's place of incarceration is in Bee County, in the Corpus Christi Division of the Southern District of Texas, but he was convicted in Bexar County, in the San Antonio Division of the Western District of Texas. 28 U.S.C. § 124(b)(6), (d)(4). For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought. 28 U.S.C. §§ 1404(a), 1406(a). Specifically regarding a § 2254 petition, the district court where a petition is filed, in the exercise of its discretion and in furtherance of justice, may transfer the petition to the other eligible district court for hearing and determination. 28 U.S.C. § 2241(d).

Here, Lozano's submission of his claims to this court was not improper because he is in custody in the Corpus Christi Division of the Southern District of Texas. (D.E. 1 at 1); 28 U.S.C. § 124(b)(6). However, in the exercise of discretion and to further the interests of justice, the Clerk is directed to transfer Lozano's petition to the San Antonio Division of the Western District of Texas, where Lozano was convicted. (D.E. 1 at 2); 28 U.S.C. § 124(d)(4). Notably, Lozano raises claims about the trial testimony of law enforcement officers and the actions of his trial counsel, and each of those people is in the San Antonio Division. (*See* D.E. 1 at 7-9). Lozano does not appear to have a preference between the two districts, as he directed his petition to the "Corpus Christi/San Antonio Division." (*Id.* at 1).

Accordingly, it is ordered that the Clerk of the Court TRANSFER Lozano's petition to the United States District Court for the Western District of Texas, San Antonio Division. All pending motions are denied as moot subject to being reurged after the case is transferred.

ORDERED this 25th day of July, 2019.



B. JANICE ELLINGTON
UNITED STATES MAGISTRATE JUDGE